



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN
DIRECTOR

May 8, 1995
AO-95-16

David Faria
210 Milton Street
Dartmouth, MA 02748

Re: Expenditures for Legal Expenses

Dear Mr. Faria:

This letter is in response to your April 9, 1995 letter requesting an advisory opinion.

You have asked if your political committee may expend funds to defray certain legal costs incurred during your campaign for reelection to the Dartmouth Board of Selectman in 1994. Specifically, you state that you retained an attorney in connection with the production and distribution of an unsigned political flyer which contained false statements and an "unsavory" characterization of you. The flyer was distributed throughout the Town of Dartmouth four days prior to the election. After the flyer was distributed, on March 31, 1994, you personally filed a hand written complaint with the Dartmouth Police Department. After an investigation by the police, you filed "application for a criminal complaint . . . against [your] opponent" for violation of M.G.L. c. 56, ss. 39-42. You filed the application on your own behalf since the police decided not to file such an application. A court hearing is scheduled for May 19, 1995 to determine whether to issue a criminal complaint. At the hearing, approximately ten witnesses will be summoned. You have hired an attorney to represent you at the hearing and have stated that, "It is important for me and my future political career that this matter be resolved and the inaccuracy corrected."

The campaign finance law provides that political committees organized on behalf of municipal candidates may expend money "for the enhancement of the political future of the candidate . . . so long as such expenditure is not primarily for the candidate's or any other person's personal use . . ." Expenditures must also be consistent with regulations promulgated by this office. See M.G.L. c. 55, s. 6 and 970 CMR 2.00 et seq.

Although the regulations promulgated by the office expressly permit certain legal expenses, the regulations do not specifically permit legal fees incurred in connection with initiating criminal proceedings. See 970 CMR 2.06(6)(a)1-3. In connection with civil or administrative proceedings as

opposed to a criminal proceeding, however, the regulations permit "expenses relative to necessary legal action to protect or further the interests of the political committee." See 970 CMR 2.06(6)(a)3. In addition, the regulations provide that permitted expenditures include not only those expenditures specifically enumerated but also "any expenditures which are similar to" those expenditures specifically set forth in the regulations. See 970 CMR 2.06(3). Therefore, expenses relative to necessary legal action to protect or further the interests of a political committee may be permissible even in connection with criminal proceedings.¹

In a number of advisory opinions, this office has advised that a political committee may pay reasonable legal expenses. Generally, these opinions address a situation when the candidate is the subject of an investigation or civil action. See AO-94-31 and AO-90-21 (political committee could pay expenses incurred in defamation action) and AO-94-25, AO-92-18, AO-91-26 and AO-91-08 (political committee could pay expenses related to Ethics Commission investigation).

In AO-85-16, however, this office concluded that a political committee could defray the legal costs associated with a defamation action commenced by the candidate provided that the nature of the interest in pursuing the action was primarily a concern about its effect on the candidate's political future. The opinion cautioned that a "political committee may not expend funds on behalf of its candidate on this type of legal action if the primary purpose of the action is personal vindication for the candidate." In addition, the opinion noted that the expense was appropriate only if "the context in which the defamation action arose [was] related to the [candidate's] campaign for public office. . . ." I have enclosed a copy of AO-85-16 for your information.

You have stated that you filed a criminal complaint in response to a flyer depicting a character, identifiable as you, in an unsavory manner and which contained false statements regarding your family. The flyer was distributed shortly before election day. You also state that this action "is important **for me and my future political career. . .**" Emphasis supplied. To paraphrase AO-85-16, since the flyer was distributed just four days before the election and concerns your reputation and political future, the context in which the criminal action arose was related to your campaign for public office. Therefore, it is this office's opinion that your political committee may pay for legal expenses incurred by you even though the action is criminal rather than civil provided

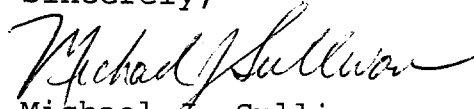
¹ This opinion is narrow in its focus and limited to facts of this case, e.g. the payment of legal expenses in connection with an application for a criminal complaint brought by a candidate under the circumstances outlined in your letter. If a complaint is issued, I assume that the matter will be prosecuted by the district attorney's office and further legal expenses by your political committee would be unnecessary.

that the purpose of the action is not **primarily** personal, e.g. not primarily for your or your family's personal vindication.

This opinion has been rendered solely on the basis of representations made in your letter and a telephone conversation with this office's General Counsel and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,


Michael J. Sullivan
Director

MJS/cp